



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/700,423 | 11/05/2003 | John R. Kunz | JEVANS-3 | 5677 |

32132 7590 12/28/2004
LAMORTE & ASSOCIATES P.C.
P.O. BOX 434
YARDLEY, PA 19067

| |
|----------|
| EXAMINER |
|----------|

MAH, CHUCK Y

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3676

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/700,423 | | KUNZ ET AL. | |
| | Examiner | | Art Unit | |
| | Chuck Mah | | 3676 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 4-10 is/are allowed.
- 6) ☒ Claim(s) 3,11,12 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3 and 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 3, it is not clear what "said side surfaces" is referring to and how it is related to the "walls".

In claim 14, lines 6-7, "one brake shoe engages opposite sides of each window sash" cannot be understood structurally. It is not clear what is being defined as "opposite sides" and how one brake shoe is able to engage the two sides.

Further, it is not understood how "a set of brake shoes" (multiple shoes) are structurally and functionally related to the sash to render the invention operable.

Line 11-19, it cannot be understood how "curl springs" (multiple springs) are related to the brake shoes or sash to render the device operable. The disclosure does not clearly show such embodiments.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiments of

claims 14-18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Westfall (5,353,548). Note that '548 has brake shoes (50), curl springs (see figs. 20+), spring anchors (12, 70). '548 clearly points out that the advantages include arrangement of the counterbalance device to accommodate a full extent of sash travel, a normal configuration of jamb and shoe channel, and standard tilt latches mounted on the upper rail of a sash (col. 1 lines n44-50 and 60-68).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA 2382790A1 in view of LaSee (6,088,880).

CA '790 discloses the invention as claimed but for at least one rib extending from each side of the shoe body. '880 teaches a sliding shoe having ribs (48) extending from the sliding surface of the shoe body to reduce friction and jamming from dirt or debris between the shoe and the track. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sliding surfaces of '790 with ribs extending therefrom as taught by

'880 to reduce friction and jamming from dirt or debris between the shoe and the track.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westfall '548 in view of LaSee '880 for the same reason as stated in last paragraph above.

9. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA '790 in view of Westfall '548.

'790 discloses the invention as claimed but fails to show any specific spring anchors. '548 teaches a window balance arrangement having spring anchors mounted in the shoe channel to accommodate "a full extend of sash travel" and "standard tilt latches mounted on the upper rail of a sash". It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the arrangement of CA '790 with the spring anchors as taught by '548 to accommodate a full extend of sash travel and the tilt latches on the upper rail of a sash.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over CA '790 and Westfall '548 as applied to claims 14 and 15 above, and further in view of LaSee '880 for the same reason as stated in paragraph 7 of this action.

Allowable Subject Matter

11. Claims 1, 2, and 4-10 are allowed.

12. Claim 3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

13. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 17 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

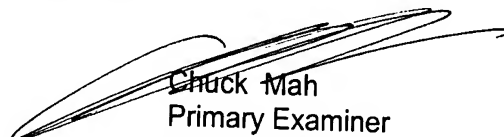
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Mah whose telephone number is (703) 308-0676. The examiner can normally be reached on 5/4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 10/700,423
Art Unit: 3676

Page 7

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chuck Mah
Primary Examiner
Art Unit 3676

CM